

## HOUSE BILL NO. 2432

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health

on \_\_\_\_\_)

(Patrons Prior to Substitute--Delegates LaRock and Durant [HB 1707])

A BILL to amend and reenact § 63.2-100 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-273.5, relating to minor students experiencing gender incongruence; parental notification of certain requests and parental permission for certain plans required; parental care.

**Be it enacted by the General Assembly of Virginia:**

1. That § 63.2-100 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 22.1-273.5 as follows:

**§ 22.1-273.5. Minor students experiencing gender incongruence; parental notification of certain requests and parental permission for certain plans required.**

A. As used in this section, "gender incongruence" means a difference between an individual's biological sex and such individual's perceived or desired gender.

B. Each public elementary or secondary school principal or his designee shall, as soon as practicable, inform at least one parent of a minor student enrolled in such school if such minor requests that any individual who is employed in such school participate in the transition of such minor to a sex or gender different from the minor's biological sex while at school, including the use of pronouns that are inconsistent with the minor's biological sex.

C. Each public elementary or secondary school principal or his designee shall request and receive permission from at least one parent of a minor student enrolled at such school prior to the implementation at such school of any plan concerning any gender incongruence experienced by such minor, including any counseling of such minor at school. Any such plan shall include provision for parental participation to the extent requested by the parent.

§ 63.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Further, in no event shall referring to and raising the child in a manner consistent with the child's biological sex, including related mental health or medical decisions, be considered abuse or neglect. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care, or an intimate partner of such parent or person, commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis;

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a Tier III offender pursuant to § 9.1-902; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the child within 30 days of the child's birth to (i) a hospital that provides 24-hour emergency services, (ii) an attended emergency medical services agency that employs emergency medical services providers, or (iii) a newborn safety device located at and operated by such hospital or emergency medical services agency. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult as defined in § 63.2-1603.

81 "Adult day care center" means any facility that is either operated for profit or that desires licensure  
82 and that provides supplementary care and protection during only a part of the day to four or more aged,  
83 infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the  
84 State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the  
85 home or residence of an individual who cares for only persons related to him by blood or marriage.  
86 Included in this definition are any two or more places, establishments or institutions owned, operated or  
87 controlled by a single entity and providing such supplementary care and protection to a combined total of  
88 four or more aged, infirm or disabled adults.

89 "Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as  
90 defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit,  
91 benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the  
92 adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult  
93 exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an  
94 intentional failure to use the financial resources of an adult in a manner that results in neglect of such  
95 adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the  
96 use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or  
97 services or perform services against his will for another's profit, benefit, or advantage if the adult did not  
98 agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or to perform  
99 such services.

100 "Adult foster care" means room and board, supervision, and special services to an adult who has a  
101 physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.  
102 "Adult foster care" does not include services or support provided to individuals through the Fostering  
103 Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9.

104 "Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances  
105 that he is not able to provide for himself or is not being provided services necessary to maintain his  
106 physical and mental health and that the failure to receive such necessary services impairs or threatens to  
107 impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult

is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

"Adult protective services" means services provided by the local department that are necessary to protect an adult as defined in § 63.2-1603 from abuse, neglect or exploitation.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

133 "Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who  
134 receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive  
135 these benefits except for excess income.

136 "Birth family" or "birth sibling" means the child's biological family or biological sibling.

137 "Birth parent" means the child's biological parent and, for purposes of adoptive placement, means  
138 parent(s) by previous adoption.

139 "Board" means the State Board of Social Services.

140 "Child" means any natural person who is (i) under 18 years of age or (ii) for purposes of the  
141 Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9, under 21 years of age  
142 and meets the eligibility criteria set forth in § 63.2-919.

143 "Child-placing agency" means (i) any person who places children in foster homes, adoptive homes  
144 or independent living arrangements pursuant to § 63.2-1819, (ii) a local board that places children in foster  
145 homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221, or (iii) an entity that assists  
146 parents with the process of delegating parental and legal custodial powers of their children pursuant to  
147 Chapter 10 (§ 20-166 et seq.) of Title 20. "Child-placing agency" does not include the persons to whom  
148 such parental or legal custodial powers are delegated pursuant to Chapter 10 (§ 20-166 et seq.) of Title  
149 20. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their  
150 authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

151 "Child-protective services" means the identification, receipt and immediate response to complaints  
152 and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment,  
153 and arranging for and providing necessary protective and rehabilitative services for a child and his family  
154 when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

155 "Child support services" means any civil, criminal or administrative action taken by the Division  
156 of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or  
157 collect child support, or child and spousal support.

158 "Child-welfare agency" means a child-placing agency, children's residential facility, or  
159 independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care.

Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;
2. An establishment required to be licensed as a summer camp by § 35.1-18; and
3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family and permanency team" means the group of individuals assembled by the local department to assist with determining planning and placement options for a child, which shall include, as appropriate, all biological relatives and fictive kin of the child, as well as any professionals who have served as a resource to the child or his family, such as teachers, medical or mental health providers, and clergy

members. In the case of a child who is 14 years of age or older, the family and permanency team shall also include any members of the child's case planning team that were selected by the child in accordance with subsection A of § 16.1-281.

"Federal-Funded Kinship Guardianship Assistance program" means a program consistent with 42 U.S.C. § 673 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1305, payments to eligible individuals who have received custody of a child of whom they had been the foster parents.

"Fictive kin" means persons who are not related to a child by blood or adoption but have an established relationship with the child or his family.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency. "Foster care placement" does not include placement of a child in accordance with a power of attorney pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20.

"Foster home" means a residence approved by a child-placing agency or local board in which any child, other than a child by birth or adoption of such person or a child who is the subject of a power of attorney to delegate parental or legal custodial powers by his parents or legal custodian to the natural person who has been designated the child's legal guardian pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20 and who exercises legal authority over the child on a continuous basis for at least 24 hours without compensation, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person;

214 (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of  
215 § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8; and (iii) a home in which  
216 are received only children who are the subject of a properly executed power of attorney pursuant to  
217 Chapter 10 (§ 20-166 et seq.) of Title 20.

218 "Independent living" means a planned program of services designed to assist a child age 16 and  
219 over and persons who are former foster care children or were formerly committed to the Department of  
220 Juvenile Justice and are between the ages of 18 and 21 in transitioning to self-sufficiency.

221 "Independent living arrangement" means placement of (i) a child at least 16 years of age who is in  
222 the custody of a local board or licensed child-placing agency by the local board or licensed child-placing  
223 agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed  
224 to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile  
225 Justice, in a living arrangement in which such child or person does not have daily substitute parental  
226 supervision.

227 "Independent living services" means services and activities provided to a child in foster care 14  
228 years of age or older who was committed or entrusted to a local board of social services, child welfare  
229 agency, or private child-placing agency. "Independent living services" may also mean services and  
230 activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the  
231 age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to  
232 the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child  
233 at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department  
234 of Juvenile Justice immediately prior to placement in an independent living arrangement. Such services  
235 shall include counseling, education, housing, employment, and money management skills development,  
236 access to essential documents, and other appropriate services to help children or persons prepare for self-  
237 sufficiency.

238 "Independent physician" means a physician who is chosen by the resident of the assisted living  
239 facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner,  
240 officer, or employee or as an independent contractor with the residence.

241 "Intercountry placement" means the arrangement for the care of a child in an adoptive home or  
242 foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other  
243 entity authorized to make such placements in accordance with the laws of the foreign country under which  
244 it operates.

245 "Interstate placement" means the arrangement for the care of a child in an adoptive home, foster  
246 care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out  
247 of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or  
248 nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the  
249 action of any court.

250 "Kinship care" means the full-time care, nurturing, and protection of children by relatives.

251 "Kinship guardian" means the adult relative of a child in a kinship guardianship established in  
252 accordance with § 63.2-1305 or 63.2-1306 who has been awarded custody of the child by the court after  
253 acting as the child's foster parent.

254 "Kinship guardianship" means a relationship established in accordance with § 63.2-1305 or 63.2-  
255 1306 between a child and an adult relative of the child who has formerly acted as the child's foster parent  
256 that is intended to be permanent and self-sustaining as evidenced by the transfer by the court to the adult  
257 relative of the child of the authority necessary to ensure the protection, education, care and control, and  
258 custody of the child and the authority for decision making for the child.

259 "Local board" means the local board of social services representing one or more counties or cities.

260 "Local department" means the local department of social services of any county or city in this  
261 Commonwealth.

262 "Local director" means the director or his designated representative of the local department of the  
263 city or county.

264 "Merit system plan" means those regulations adopted by the Board in the development and  
265 operation of a system of personnel administration meeting requirements of the federal Office of Personnel  
266 Management.

267 "Parental placement" means locating or effecting the placement of a child or the placing of a child  
268 in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

269 "Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to  
270 the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services;  
271 child care; and general relief.

272 "Qualified assessor" means an entity contracting with the Department of Medical Assistance  
273 Services to perform nursing facility pre-admission screening or to complete the uniform assessment  
274 instrument for a home and community-based waiver program, including an independent physician  
275 contracting with the Department of Medical Assistance Services to complete the uniform assessment  
276 instrument for residents of assisted living facilities, or any hospital that has contracted with the Department  
277 of Medical Assistance Services to perform nursing facility pre-admission screenings.

278 "Qualified individual" means a trained professional or licensed clinician who is not an employee  
279 of the local board of social services or licensed child-placing agency that placed the child in a qualified  
280 residential treatment program and is not affiliated with any placement setting in which children are placed  
281 by such local board of social services or licensed child-placing agency.

282 "Qualified residential treatment program" means a program that (i) provides 24-hour residential  
283 placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that  
284 meets the clinical and other needs of children with serious emotional or behavioral disorders, including  
285 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this  
286 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site  
287 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts  
288 outreach with the child's family members, including efforts to maintain connections between the child and  
289 his siblings and other family; documents and maintains records of such outreach efforts; and maintains  
290 contact information for any known biological family and fictive kin of the child; (v) whenever appropriate  
291 and in the best interest of the child, facilitates participation by family members in the child's treatment  
292 program before and after discharge and documents the manner in which such participation is facilitated;  
293 (vi) provides discharge planning and family-based aftercare support for at least six months after discharge;

294 (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an organization approved by  
295 the federal Secretary of Health and Human Services; and (viii) requires that any child placed in the  
296 program receive an assessment within 30 days of such placement by a qualified individual that (a) assesses  
297 the strengths and needs of the child using an age-appropriate, evidence-based, validated, and functional  
298 assessment tool approved by the Commissioner of Social Services; (b) identifies whether the needs of the  
299 child can be met through placement with a family member or in a foster home or, if not, in a placement  
300 setting authorized by 42 U.S.C. § 672(k)(2), including a qualified residential treatment program, that  
301 would provide the most effective and appropriate level of care for the child in the least restrictive  
302 environment and be consistent with the short-term and long-term goals established for the child in his  
303 foster care or permanency plan; (c) establishes a list of short-term and long-term mental and behavioral  
304 health goals for the child; and (d) is documented in a written report to be filed with the court prior to any  
305 hearing on the child's placement pursuant to § 16.1-281, 16.1-282, 16.1-282.1, or 16.1-282.2.

306 "Residential living care" means a level of service provided by an assisted living facility for adults  
307 who may have physical or mental impairments and require only minimal assistance with the activities of  
308 daily living. The definition of "residential living care" includes the services provided by independent  
309 living facilities that voluntarily become licensed.

310 "Sibling" means each of two or more children having one or more parents in common.

311 "Social services" means foster care, adoption, adoption assistance, child-protective services,  
312 domestic violence services, or any other services program implemented in accordance with regulations  
313 adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et  
314 seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter  
315 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under  
316 the supervision of the Commissioner for Aging and Rehabilitative Services.

317 "Special order" means an order imposing an administrative sanction issued to any party licensed  
318 pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special  
319 order shall be considered a case decision as defined in § 2.2-4001.

320 "State-Funded Kinship Guardianship Assistance program" means a program that provides  
321 payments to eligible individuals who have received custody of a relative child subject to a kinship  
322 guardianship assistance agreement developed in accordance with § 63.2-1306.

323 "Supervised independent living setting" means the residence of a person 18 years of age or older  
324 who is participating in the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter  
325 9 where supervision includes a monthly visit with a service worker or, when appropriate, contracted  
326 supervision. "Supervised independent living setting" does not include residential facilities or group homes.

327 "Temporary Assistance for Needy Families" or "TANF" means the program administered by the  
328 Department through which a relative can receive monthly cash assistance for the support of his eligible  
329 children.

330 "Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the  
331 Temporary Assistance for Needy Families program for families in which both natural or adoptive parents  
332 of a child reside in the home and neither parent is exempt from Virginia Initiative for Education and Work  
333 (VIEW) participation under § 63.2-609.

334 "Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social  
335 Security Act, as amended, and administered by the Department through which foster care is provided on  
336 behalf of qualifying children.

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